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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

No. 75-423

JERRY TIMOTHY JONES ..... PETITIONER

V.

COMMONWEALTH OF KENTUCKY ..... RESPONDENT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF KENTUCKY

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MAY IT PLEASE THE COURT:

The respondent accepts the petitioner's statement on Opinions Below, Jurisdiction, and Question Presented. The respondent takes exception to the petitioner's statement of the statutory provisions involved in this case.

STATUTORY PROVISIONS

The petitioner has cited 18 U.S. Code, §4244, as being pertinent to this case. The case *sub judice* is a criminal case in the state court and therefore the statutes of the United States have no application to the case. Specifically, 18 U.S. Code, §4244, has no application to this case because it applies only to criminal trials in the United States District Court.

The petitioner has also cited Kentucky Revised Statute 203.015 as being pertinent in this case. Respondent disagrees and submits that said statute has no application to the case because it pertains to the civil procedure for adjudication of incompetency. Legal competency to stand trial is not identical to civil competency to manage one's affairs and KRS 203.015 deals only with the latter.

The only Kentucky law which is applicable to the case *sub judice* is Kentucky Rule of Criminal Procedure 8.06, which the petitioner has also cited. This court rule has the full effect of a statute. The issue in this case is whether said rule is constitutional under Section 1 of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The respondent accepts the petitioner's statement of the case.

ARGUMENT

THERE IS NO CONSTITUTIONAL QUESTION FOR WHICH A WRIT OF CERTIORARI SHOULD BE GRANTED, BECAUSE THE KENTUCKY COURT OF APPEALS HAS COMPLIED WITH THE ORDER OF THE SUPREME COURT OF THE UNITED STATES ON REMAND TO RECONSIDER THE CASE IN THE LIGHT OF DROPE V. MISSOURI, AND THE PETITIONER IS ATTEMPTING TO INVOKE A NON-EXISTENT RULE OF LAW.

The Kentucky Court of Appeals, the court of last resort of the state, has complied with this Honorable Court's order issued April 28, 1975 (Petitioner's Brief,

Appendix A, p. la), to reconsider its prior decision affirming the judgment of conviction of the petitioner for willful murder entered October 12, 1973 (Petitioner's Brief, Appendix C, p. 7a), in the light of *Drope* v. *Missouri*, 420 U.S. ____ (decided February 19, 1975). After reconsideration, the Kentucky Court of Appeals again affirmed the conviction by a Per Curiam Opinion rendered June 20, 1975 (Petitioner's Brief, Appendix B, p. 3a). Respondent requests the Court to examine said Per Curiam Opinion in order that this Honorable Court may find that the Kentucky Court of Appeals has carefully considered the issue in the case. The Opinion analyzes *Drope* and finds, inter alia, as follows:

> ". . . *Drope* reaffirms the proposition that when a court is put on notice that a defendant coming on for trial lacks the capacity to understand the nature and object of the proceeding, to consult with counsel, or to assist in preparing his defense, he may not be subjected to a trial. Although this is the ancient common-law rule, *Drope* promulgates guidelines which must be considered by a trial court in determining whether the trial should proceed, the trial court being required to take into consideration evidence of the defendant's prior irrational conduct, his demeanor at trial, and any medical opinion on his competence to stand trial." (Petitioner's Brief, Appendix B, p. 4a)

The Kentucky Court of Appeals concluded from the record that the trial court had fulfilled the requirements of *Drope* and, further, that: "Counsel for Jones did not at any time prior to or during the trial indicate to the court that they were of the opinion that Jones was not

competent to stand trial or to participate in his defense." (Petitioner's Brief, Appendix B, p. 5a).

We will not prolong the discussion of *Drope*, because the petitioner has virtually conceded that his trial was not deficient when measured by *Drope*. Petitioner's brief states: "The facts of the case at bar do not fit the pattern of Drope. . . ." (Petitioner's Brief, p. 10). The petitioner accurately points out that in *Drope* and *Pate* [*Pate* v. *Robinson*, 383 U.S. 375, 86 S.Ct. 836 (1966)] there was evidence of bizarre behaviour by the defendants such as would lead a layman to conclude that the defendants were insane. The petitioner is asserting that, even if a defendant appears to the trial judge and to other laymen to be in possession of his rational faculties, if a motion for a psychiatric examination is made at any time the trial court has no discretion in the matter but must grant said motion. This assertion has no basis in state law and is not constitutionally mandated.

The standard of mental competency to stand trial is not the same as the standard set forth by statute for "incompetency proceedings", to wit:

> "(2) 'Incompetency' or 'incompetent person' shall apply to a person of unsound mind who from confirmed bodily infirmity is unable to make known to others by speech, sign or otherwise his thoughts or desires and by reason thereof is unable to manage his estate, or one whose mind because of mental illness or infirmity or old age has become so disabled as to render him unable to manage his estate. (1968 H 533, §37. Eff. 9-1-68. 1962 c 106, Art 11, §7; 1960 c 66, §1; 1954 c 16, §2; 1952 c 50, §26)."

In criminal law it has never been held that persons to be held criminally accountable must be shown to be rationally able to manage their estate, or that such incompetency excuses the defendant from standing trial. The standard promulgated by statute and the decisions of the Supreme Court such as *Drope* v. *Missouri,* supra, is that the defendant must have the "capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense." (*Drope*, 95 S.Ct. 903). A person may be otherwise mentally disabled, but if he has the capacity just described he is required to stand trial.

Professional estimates as to the incidence of mental illness at some time during a person's life range as high as one-third of the population.[1] But this does not mean

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1/See "Introduction to Psychology" by Ernest R. Hilgard, Stanford University; Richard C. Atkinson, Stanford University; Rita L. Atkinson, Stanford, University; published by Harcourt Grace Jovanovich, Inc. of New York-Chicago-San Francisco-Atlanta 1971 (Fifth Edition): "Severe mental illness is an important social problem. At any given moment approximately 750,000 patients are being cared for in the mental hospitals of the United States, and they occupy more than half of all hospital beds. This means that more people are presently hospitalized for mental illness than for cancer, heart disease, tuberculosis, and all other diseases combined. Estimates indicate that one out of every ten babies born today will hospitalized for mental illness at some time during his life." (p. 482) ** "The existing data suggest that neurotic disorders are far more prevalent than one might expect. Two community studies, one in New York City and another in a small town in Nova

that all such people should be excused at all times, or at any time, from being tried on criminal charges.

The mental disability as to excusing from trial is *special* and must be measured by the trial court according to the peculiar standard set by the law, i.e., inability to understand the nature of the charge and the procedure and to assist in his defense. The defendant's history as to mental health and his mental health generally, while being of some significance, are not controlling.

The case relied on by the petitioner for his proposition that a trial judge has no discretionary power in ruling on a motion for psychiatric examination before trial except as to whether it is frivolous or not in good faith (Petitioner's Brief, p. 11) is a case applying 18 U.S.C. §4244: *United States* v. *Walker,* 301 F.2d 211 (6th Cir. 1962). This federal statute does not prevail in state courts and the petitioner has cited no authority that 18 U.S.C. §4244 states the constitutional minimum for due process of law.

Scotia, give some measure of the extent of symptoms of of disturbed mental health. The New York study estimates that 30 percent of the population have clinical symptoms sufficient to disturb their everyday lives. That this high figure is not due solely to the strains of urban life is indicated by the figure of 32 percent for the small town (Srole and others, 1962; Leighton and others, 1963)." (p. 483); Srole, L., Langner, T.S., Michael, S.T., Opler, M.K., and Rennie, T.A.C. (1962) **Mental health in the metropolis: The Midtown Manhatten** study. N.Y.: McGraw-Hill.—483, 484; Leighton, D.C., Harding, J.S., Macklin, D.B., MacMillan, A.M., and Leighton, A.H. (1963) **The character of danger: Psychiatric symptoms in selected communities.**

CONCLUSION

Petitioner concedes that the courts of Kentucky have followed the standard of *Drope* v. *Missouri*, supra, in his case, but he seeks the pronouncement by this Court of a different standard. Since *Drope* is the extant standard, the petition for writ of certiorari should be denied.

Respectfully submitted,

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